IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2006

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN

C.R.P.(PD)No.717 of 2006

Tamil Nadu Housing Board
Phase-5 Residents' Welfare Association
Sathuvachari
Vellore Society No.185/02
rep.by its President K.Umasankar .. Petitioner

-Vs-

1. Land Acquisition Officer &
   Revenue Divisional Officer
   Collectorate, Vellore-9

2. V.Annamalai Chettiar

3. A.Jayapal

4. Thenmozhi

5. J.Rathnakumari

6. J.Radhika

7. J.Rajapalani

8. J.Palanivel Rajan .. Respondents

Memorandum of Grounds of Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 2.2.2006 made in I.A.No.1294 of 2005 in L.A.O.P.No.3 of 2005 on the file of the Court of the Additional District & Sessions Judge (Fast Track Court), Vellore.

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For Petitioner :: Ms.P.Veena for
Mr.T.R.Rajaraman

For Respondents :: Mr.R.Subramanian
Senior Counsel for
Mrs.S.Hemalatha for
R3, R5 to R8

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ORDER

The following important question has arisen for consideration in this civil revision petition.

> "Whether an allottee of a plot by the Tamil Nadu Housing Board is a "person interested" and consequently is entitled to be impleaded in the proceedings pending before the civil Court under Section 18 of the Land Acquisition Act, 1894 (Central Act I of 1894)?

2. In exercise of the power of eminent domain, the State of Tamil Nadu acquired vast extent of lands based on the proposal of the Tamil Nadu Housing Board (hereinafter referred to as the "Board") for implementation of the housing scheme at Sathuvachari, Vellore. After the acquisition proceedings were over, possession of the lands was handed over to the Board and the lands were plotted out and sold to the various individuals as per the scheme.

3. An award was passed under Section 11 of the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter referred to as the "Act") and not satisfied with the amount of compensation, the land owners requested the Land Acquisition Officer to refer the matter to the civil Court for enhancement of compensation. Based on such request, the matter was referred to the civil Court for adjudication, which was taken up in L.A.O.P.No.3 of 2005 on the file of the Additional District & Sessions Judge (Fast Track Court), Vellore. The revision petitioner viz., the Tamil Nadu Housing Board Phase-5 Residents' Welfare Association filed I.A.No.1294 of 2005 under Order I Rule 10(2) C.P.C. to implead the association as a party in the said L.A.O.P. By the order under revision dated 2.2.2006, the learned Judge has rejected the said application on the ground that the petitioner is not a necessary party and the beneficiary viz., the Tamil Nadu Housing Board is already added as a party. Aggrieved by the said order, the present revision petition has been filed.

4. I have heard in detail Ms.P.Veena, the learned counsel appearing for the petitioner and Mr.R.Subramanian, the learned Senior Counsel for the respondents 3 & 5 to 8.

5. According to the learned counsel for the petitioner, the members of the petitioner association are the "persons aggrieved" inasmuch as whatever the enhanced compensation awarded by the civil Court, it should be proportionately borne by the individual allottees and the burden for such payment lies on them. Hence, they are not only necessary but also proper parties for adjudication of the reference.

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6. On the other hand, the learned Senior Counsel for the respondents 3, 5 to 8 would submit that inasmuch as the beneficiary-Board is already impleaded for defending the reference, the members of the petitioner cannot be considered to be the "persons aggrieved" and they are neither necessary nor proper parties. He would also submit that in terms of Section 3(b) of the Act, the allottees cannot be considered as "persons interested". In this context, he would draw the attention of this Court to the provisions of Sections 20 and 50 of the Act.

7. I have given my anxious consideration to the respective submissions. The Board was formed with the object of formulating schemes for housing and improvement in city, town, village in the State. Once a scheme is framed, a proposal in respect of specific area of land required for implementation of the scheme is forwarded to the Government. On acceptance of the proposal, the Government, in exercise of the power of eminent domain, acquires the land under the provisions of the Act. After an award is passed under Section 11, the possession is taken by the Collector and thereafter the land shall vest in the Government under Section 16 of the Act. The lands are thereafter handed over to the Board for implementing the scheme and for disposal in accordance with Section 72 of the Tamil Nadu Housing Board Act by way of sale, lease, etc. There are two modes of sale viz., one by out-right purchase/sale and the other by the execution of lease-cum-sale agreement, wherein the buyers are entitled to make the sale consideration in installments. Initially the Board passes an order of provisional allotment determining the value of the plot allotted. The amount quantified is only provisional, as it is subject to any orders that may be passed by the civil Court or the higher courts in respect of the enhancement of compensation. When once the proceedings for enhancement of compensation is concluded and the final cost is arrived, the difference in the cost as mentioned in the provisional allotment and the final cost should be collected from the allottees. On the facts of this case, it is seen that the land owners, not satisfied with the quantum of compensation, had approached the Land Acquisition Officer for reference and ultimately the same was taken on file in L.A.O.P.No.3 of 2005 by the District & Sessions Judge (Fast Track Court), Vellore. An application was filed at the instance of the Board to implead it as a necessary party in I.A.No.1293 of 2005, which was allowed and consequently the Board was impleaded as a party to the proceedings. While rejecting the application of the petitioner for impleading, the learned Judge had referred to the order impleading the Board and found that inasmuch as the beneficiary viz., the Board is already added as a party, the allottees have no locus standi to file the application to implead them. The learned Judge has also found that the allottees are not necessary parties.

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8. The Act uses the expression "person interested" in various provisions. Section 3(b) of the Act defines the expression "person interested" as meaning, all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. Section 4 of the Act contemplates three modes of publication of notification in the Official Gazette viz., in two daily newspapers circulated in that locality of which, one shall be in the regional language, and the substance of such notification to be given at convenient places in the said locality. The purpose of the above notification is to ensure a "person interested" to make his objection and to have an opportunity of hearing in the enquiry held under Section 5-A. The said section also refers to the opportunity of hearing in respect of "any person interested". After the declaration under Section 6 is made, the Acquisition Officer is obligated to cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. That section also refers only to "persons interested". In fact, even an occupier of the land is entitled to an opportunity of being heard in the award enquiry in terms of sub-section (3) of Section 9. Such interested persons are heard and finally an award is passed under Section 11 of the Act. Section 18 of the Act contemplates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. On receipt of the said application from the Collector, under Section 19, the Court shall thereupon cause a notice under Section 20 of the Act specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely (a) the applicant, (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded, and (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector. The scope of the proceedings are restricted under Section 21, which contemplates that the scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

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9. A combined reading of the above provisions would indicate that a “person interested” in the land could be even an owner or occupier, who is entitled to receive the compensation. The question as to who are all the persons interested to defend the acquisition proceedings came up for consideration before the Apex Court in various judgments. In Himalaya Tiles and Marble (P) Ltd v. Francis Victor Coutinho (dead) by LR's (AIR 1980 SC 1118, the Apex Court considered the words "person interested" with reference to the company for whose benefit the lands are acquired to be impleaded in the proceedings under Section 18 of the Act. The observation of the Apex Court reads as follows:-

> "7. It seems to us that the definition of 'a person interested' given in Sec.18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In the instant case, it is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the Government, after acquisition, it stood transferred to the company under the agreement entered into between the company and the Government. Thus it cannot be said that the company had no claim or title to the land at all. Secondly, since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce evidence on the question of the quantum of compensation.
>
> 8. So far as this aspect of matter is concerned, there appears to be a general consensus of judicial opinion that even though the company may not have any title to the property yet it certainly has a right to appear and put forward its case in the matter of determination of the quantum of compensation. In the case of Sunder Lal V. Paramsukhdas, (1968) I SCR 362, this Court observed as follows:

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> "It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramsukhdas is a "person interested" within Sec.3(b) of the Act because he claims an interest in compensation.
> .....
> It seems to us that Paramsukhdas was clearly a person interested in the objections which were pending before the Court in the references made to it and that he was also a person whose interest would be affected by the objections, within Sec.21. He was accordingly entitled to be made a party."

13. Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a

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court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefor because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by S.18(1) of the Act."

10. The Apex Court in Neyveli Lignite Corporation Ltd. v. Special Tahsildar (LA), Neyveli & others (1995 (1) SCC 221), while considering the words "person interested" held that it comprehends the local authority or company for whose benefit the land is acquired. The Apex Court further held that for the purpose of Section 18, such local authority or company is a proper party, if not necessary party, entitled to be impleaded under Order I Rule 10 C.P.C. While considering the words "person interested", the Apex Court has emphasised that such a person is vitally interested both in the title to the property and also in the compensation to be paid therefor, because both of them shall stand concern in the future course of action vis-a-vis seriously prejudices his right. The concern of the Court ultimately is the serious prejudice caused to the rights of an individual.

11. In Krishi Upaj Mandi Samiti v. Ashok Singhal (1991 Supp (2) SCC 49), the Apex Court has held that there was a requirement to serve a notice on the person or body for whose benefit the acquisition was made and such a notice was not served on the Samiti by reference Court which enhanced the amount of compensation awarded by the Land Acquisition Officer and the said amount was further enhanced by the Court which also did not serve a notice on the Samiti. When the matter was taken on appeal before the Apex Court, the same was remitted back for the reason that the amount of compensation was determined without notice to the beneficiary. (See also U.P.Awas Exam Vikas Parishad v. Gyan Devi (dead) by L.Rs. and another, AIR 1995 SC 724, Krishnamachari v. Managing Director, APSRTC Ltd., Hyderabad & others, 1994 (6) SCC 74, Union of India v. Shersingh and others, 1993 (1) SCC 608).

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12. In matters like this, to find out as to whether a person is a proper or necessary party, the criteria for such decision would be whether he would ultimately be a person aggrieved if any order is passed enhancing the compensation and whether he is the beneficiary of the scheme. When the Apex Court had permitted to implead the local municipality or the company for whose benefit the lands were acquired solely on the ground that if any amount of compensation is enhanced ultimately the beneficiary should pay the enhanced compensation, this Court is at a loss to understand as to why the same principle could not be extended in the case of allottees of the Housing Board. Though the land is acquired by the Government and possession is handed over, the Board cannot be considered to be the beneficiary of the land, as the right to put the land for use is limited to the scheme that was formulated by the Board. The land which was acquired and handed over to the Board cannot be retained by the Board unutilised, as the land has to be disposed of strictly in accordance with the scheme and more particularly, as contemplated under Section 72 of the Tamil Nadu Housing Board Act. The ultimate beneficiaries are the persons who have been allotted the land. It cannot be disputed that when provisional allotment orders are made, a condition is imposed whereby the amount fixed in the provisional allotment order towards the sale consideration is tentative and provisional and the same is subject to revision depending upon the orders, if any, passed by the civil Court or the higher courts. In the event the civil Court enhanced the amount when a reference is made under Section 18 of the Act, it is not the Board which is to bear the difference in enhanced compensation and thereby it is not a person aggrieved in the sense. The real person aggrieved would be the allottee, as he is made liable to pay the difference of amount fixed in the provisional allotment order by way of tentative cost and the final cost arrived by the Board depending upon the enhancement of compensation at the time the sale deed is executed. Hence the person aggrieved would be the allottee and in such event, any order that may be passed behind his back, which would affect his interest cannot stand to the scrutiny of law. The words "person interested" as defined under Section 3(b) of the Act is an inclusive definition. The words "person interested" includes a person for whose benefit the land is acquired. In this context, it would be relevant to refer to the expression "person aggrieved". The expression "person aggrieved" in fact means a person who has suffered a legal grievance viz., against whom a decision has been pronounced which lawfully deprived him of something or wrongfully refused him something or wrongfully affected his entitlement to a property. The expression "person aggrieved" by an order must mean, against whom a decision has been pronounced which has wrongfully refused him something, which he had a right to demand. Such expression shall also include a person who is likely to be prejudicially affected by an order.

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13. In that view of the matter, an allottee of the plot by the Board is certainly a person aggrieved to defend the petition made by the land owner in respect of the quantum of compensation fixed under Section 11 of the Act and consequently could seek for enhancement of the compensation. This is further clear that in terms of Section 21 of the Act, the scope of the enquiry in the proceedings under Section 18 shall be restricted to consideration of the interest of the persons affected by the objection, when once this Court comes to the conclusion that an allottee would be a person affected in the event his objection as to the quantum fixed in the award enquiry is decided adversely affecting his right. In fact, the civil Court is obligated to issue notice to all persons interested in the objection as contemplated under Section 20(b) of the Act. This Court cannot overlook the further fact that an allottee who is ultimately made to pay the difference of amount of enhanced compensation cannot be left without a right to defend such enhancement either before the civil Court or in the higher forum. In the country of ours, when the rule of law governs, no citizen could be left out without any remedy or relief when he is faced with an order adversely affecting his right to hearing.

14. Coming to the submission of the learned Senior Counsel for the respondents 3, 5 to 8 that in terms of Order I Rule 10 C.P.C. the petitioner cannot be considered to be a person aggrieved, learned counsel for the petitioner relied upon a judgment of the Apex Court in Sangeeta Singh v. Union of India and others (2005 (5) CTC 571) relating to the interpretation of the Statute. In my opinion, the said judgment is not applicable to the facts of this case, as the language employed in Section 20(b) and Section 21 is clear, wherein a notice is contemplated to the person interested in the objection and the scope of proceedings also relating to the interest of the person affected by such objection.

15. For all the above reasons, it is necessarily to be held that an allottee of the plot by the Housing Board is the real beneficiary and, therefore, certainly, a "person interested", and for the said reason such allottee is a proper and necessary party in terms of Order I Rule 10 C.P.C., as his interest is likely to be affected by the objections made under Section 18 for the purpose of impleading himself in the proceedings before the civil Court.

16. In that view of the matter, the impugned order is set aside and the civil revision petition is allowed. Consequently, I.A.No.1294 of 2005 is allowed and the petitioner is impleaded as a party to the proceedings. The learned Additional District & Sessions Judge (Fast Track Court), Vellore is directed to issue notice to the

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petitioner and dispose of the matter after hearing the petitioner as well. No costs. Consequently, V.C.M.P.No.218 of 2006 and C.M.P.No.6916 of 2006 are closed.
ss

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Addl. District & Sessions Judge
(Fast Track Court), Vellore

2. The Record Keeper, V.R Section,
High Court, Madras

+ one cc to Mr. T.R. Rajaraman, Advocate sr no. 36308
+ one cc to Ms. S. Hemalatha, Advocate sr no. 36341

PV(CO)
NM(30.08.2006)

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